

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 4:04-CR-56-2H
No. 4:12-CV-74-H

NATHAN PETWAY,)
)
Petitioner,)
)
)
v.)
)
)
UNITED STATES OF AMERICA)
)
Respondent.)

ORDER

This matter is before the court on petitioner's motion to vacate or set aside sentence pursuant to 28 U.S.C. § 2255, filed December 2, 2011, and supplemented on May 1, 2012 [DE #171, 184]. Petitioner previously filed a § 2255 motion, which the court dismissed on November 18, 2010, for failure to state a claim upon which relief could be granted. Because the motion presently before the court is a successive § 2255 motion, this court is without jurisdiction to consider it. See 28 U.S.C. § 2255(h) ("A second or successive motion must be certified . . . by a panel of the appropriate court of appeals . . . "). Accordingly, petitioner's motion to vacate is DISMISSED WITHOUT PREJUDICE to petitioner's right to apply to the Fourth Circuit for leave to file a successive § 2255 motion.

Because petitioner's motion is dismissed without prejudice to his right to apply to the Fourth Circuit for leave, this order does not raise a substantial issue for appeal concerning the denial of a constitutional right. Accordingly, a certificate of appealability is not issued as to this order.

This 6th day of August 2012.



MALCOLM

J. HOWARD

Senior United States District Judge

At Greenville, NC
#31